

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
JERSEY CENTRAL POWER & LIGHT	)	
	)	Case No. 97F001
Radio Team, Inc.	)	
Finder's Preference Request	)	
Regarding Station WNIT929	)	
Morristown, NJ	)	
	)	

**MEMORANDUM OPINION AND ORDER**

**Adopted:** August 10, 2000

**Released:** August 17, 2000

By the Commission:

**I. INTRODUCTION**

1. On October 1, 1999, Radio Team, Inc. (Radio Team) filed an application for review of the Wireless Telecommunications Bureau's (Bureau) denial of its petition for reconsideration.<sup>1</sup> Radio Team's application for review seeks reversal of the Bureau's decision dismissing Radio Team's finder's preference request targeting Station WNIT929. We find no basis to reverse the Bureau's decision. Accordingly, Radio Team's application for review is denied.

**II. BACKGROUND**

2. On October 10, 1996, Radio Team filed a finder's preference request targeting Station WNIT929, licensed to Jersey Central Power and Light Company (Jersey Central).<sup>2</sup> However, Marina Concrete, Inc. (Marina Concrete) filed an earlier finder's request regarding Station WNIT929 on July 15, 1996.<sup>3</sup> In its request, Marina Concrete provided prima facie evidence that Station WNIT929 had not been in operation for over one year and was, therefore, in violation of Section 90.157(b) of the Commission's Rules.<sup>4</sup> Based on Marina Concrete's showing, the former Office of Operations cancelled Jersey Central's

<sup>1</sup> *Jersey Central Power and Light Finder's Preference Request Regarding Station WNIT929, Order*, 14 FCC Rcd 14041 (1999) (*Jersey Central*).

<sup>2</sup> Letter from Alan S. Tilles, Esq., Meyer Faller, Weisman and Rosenberg to the Federal Communications Commission (filed October 10, 1996) (Radio Team Finder's Preference Request).

<sup>3</sup> Letter from Marilyn S. Mense, Esq., Lukas, McGowan, Nace & Gutierrez to the Federal Communications Commission (filed July 15, 1996) (Marina Finder's Preference Request).

<sup>4</sup> 47 C.F.R. § 90.157(b). "For the purposes of this section, any station which has not operated for 1 year or more is considered to have been permanently discontinued."

license<sup>5</sup> and awarded a dispositive preference to Marina Concrete for Station WNIT929.<sup>6</sup> Subsequently, on July 25, 1997, the Bureau's Public Safety and Private Wireless Division (Division) dismissed Radio Team's finder's preference request based on the award to Marina Concrete.<sup>7</sup> Marina Concrete failed to file an application for authorization (formerly FCC Form 600) following the award of its dispositive preference.<sup>8</sup>

3. On August 25, 1997, Radio Team filed a petition for reconsideration seeking reinstatement of its finder's preference request.<sup>9</sup> Radio Team argued that its finder's request should be reinstated, because Marina Concrete never filed an application for authorization for the frequencies in question and Jersey Central's license was never deleted from the Commission's database.<sup>10</sup> On September 1, 1999, the Bureau denied Radio Team's petition for reconsideration.<sup>11</sup> The Bureau found that, because the target frequency had already been investigated by the Commission resulting in a dispositive preference granted to Marina Concrete, this frequency was not a proper subject for a finder's request.<sup>12</sup> The Bureau further concluded that, while Jersey's Central's license still remained in the Commission's database because of this proceeding, it was cancelled on November 22, 1996.<sup>13</sup> On October 1, 1999, Radio Team filed an application for review of the Bureau's September 1, 1999 action.

### III. DISCUSSION

4. In 1991, the Commission established the finder's preference program to augment its compliance review efforts in the private land mobile radio service. The program was fashioned to provide incentives for individuals to survey licenses assigned in the 220-222 MHz, 470-572 MHz and 800-900 MHz bands in order to identify licensees who had failed to construct, place in operation or continue to

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<sup>5</sup> Letter from William H. Kellet, Counsel, Office of Operations, Wireless Telecommunications Bureau to Jersey Central Power and Light (dated November 22, 1996) (Cancellation Letter).

<sup>6</sup> Letter from William H. Kellet, Counsel, Office of Operations, Wireless Telecommunications Bureau to Marilyn S. Mense, Esq., Lukas, McGowan, Nace & Gutierrez (dated November 22, 1996) (Award of Dispositive Preference).

<sup>7</sup> Letter from Anne Marie Wypijewski, Attorney, Public Safety & Private Wireless Division, Wireless Telecommunications Bureau to Alan S. Tilles, Esq., Meyer, Faller, Weisman & Rosenberg (dated July 25, 1997) (Dismissal Letter).

<sup>8</sup> Successful finders were required to file an acceptable application for authorization within 90 days following the date of the dispositive award. See Amendment of Parts 1 and 90 of the Commission's Rules Concerning the Construction, Licensing, and Operation of Private Land Mobile Radio Stations, *Report and Order*, 6 FCC 7297, 7308 ¶ 72 fn. 115 (1991) (*Report and Order*).

<sup>9</sup> Radio Team Petition for Reconsideration (filed August 22, 1997).

<sup>10</sup> *Id.* at 1-2.

<sup>11</sup> *Jersey Central*, 14 FCC Rcd at 14042 ¶ 5.

<sup>12</sup> *Id.* at 14041-42 ¶ 4.

<sup>13</sup> *Id.* at 14042 ¶ 5.

operate their stations.<sup>14</sup> Pursuant to the finder's preference program, an individual could file a finder's preference request by presenting the Commission with evidence *leading* to the cancellation of a license due to the licensee's noncompliance with Commission regulations. The Commission, upon recovery of these frequencies, would award a dispositive preference for these frequencies to the finder.<sup>15</sup>

5. Radio Team argues that the Bureau erred in finding that once the Commission initiates an investigation based on a finder's request, a subsequent request can not be processed.<sup>16</sup> In support of this argument, Radio Team proffers five examples of a second filed finder's request that the Bureau processed and eventually granted and argues that Marina's failure to perfect "meant that Radio Team's application was eligible for processing..."<sup>17</sup> While we agree with Radio Team that the Bureau has processed and awarded dispositive preferences in instances where an earlier request had been filed,<sup>18</sup> we find the circumstances of this case to be inapposite to the examples referenced by Radio Team. A review of the Commission's database indicates that all five of the cases referenced by Radio Team concern situations where the first-filed finder's request was dismissed as defective.<sup>19</sup> In cases involving an investigation based on a first-filed finder's request, the Bureau followed the procedure of allowing a later-filed request to remain active until the first-filed request was granted or dismissed. In the case of a dismissal of the first-filed finder's request, the second request was processed, in order to fully investigate

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<sup>14</sup> See *Report and Order*, 6 FCC Rcd at 7302-7303; see also Amendment of Part 1 and 90 of the Commission's Rules, *Memorandum Opinion and Order*, 8 FCC Rcd 6690 (1993).

<sup>15</sup> In 1998, the finder's preference program was eliminated. See Amendment of Part 90 Concerning the Commission's Finder's Preference Rules, *Report and Order*, 13 FCC Rcd 23816 (1998).

<sup>16</sup> Application for Review at 2.

<sup>17</sup> *Id* at 2-3. Radio Team offered the following Finder's Preference Cases as examples of second or later filed finder's preference cases that have been processed (Case Nos. 92F026/92F118, 92F029/92F121, 92F028/92F047, 92F025/92F117 and 921F123/92F409).

<sup>18</sup> We note that the *Report and Order* did stipulate that channels of licensees scheduled for or currently under compliance review are exempted from recovery. *Report and Order*, 6 FCC Rcd at 7307 ¶ 59. This holding appears to apply to cases subject to Commission instituted compliance efforts. See e.g., *In the Matter of Crown Communications, Memorandum Opinion and Order*, DA 99-1983 (released September 24, 1999) (setting aside a finder's preference award where the Commission had previously instituted a compliance investigation); *In the Matter of Montgomery County, Maryland, Order*, 14 FCC Rcd 7466 (1999) (affirming dismissal of finder's preference request where Commission was already investigating target's request for slow growth implementation).

<sup>19</sup> Four out of the five cases involve the same finder re-filing its original request after the first filing was dismissed as defective.

the target station. Conversely, as is the case here, if the first-filed request was granted, then the target station was recovered and cancelled,<sup>20</sup> regardless of whether the finder perfected his award, and any other pending requests were dismissed.<sup>21</sup>

6. As referenced above, the underlying goal of the finder's program was the recapture of unused spectrum. Finders who contribute to that goal were given a dispositive preference to become licensed for the recovered channels.<sup>22</sup> If, as in the case of Marina Concrete, the finder did not perfect his award within the required 90-day time frame, then the finder loses its preference and the recovered channel is made available to others for licensing and is reassigned through the frequency coordination process.<sup>23</sup> Nevertheless, the Commission's objective was served. In this instance, the information provided by Marina Concrete, not Radio Team, led to the recovery of the targeted station. Accordingly, Station WNIT929 was not a proper subject for a subsequent finder's request, because it had already been recovered by the Commission and cancelled pursuant to the finder's preference award to Marina Concrete.<sup>24</sup>

7. In addition, Radio Team contends that what it "found," upon filing its request, "was a license on the Commission's database which the Commission should have canceled and eliminated from the database because of Marina's failure to file."<sup>25</sup> We disagree. First, Radio Team filed its finder's request approximately a month before the award to Marina Concrete. Therefore, if Radio Team had exercised due diligence, it should have been aware of the prior filed finder's request. Second, as explained in the *Jersey Central Order*, the target's license was officially cancelled on November 22, 1996.<sup>26</sup> We reiterate that, although the target license is officially cancelled on the date the dispositive preference is granted, we delay removal of the target license from the database until the finder's application for authorization is processed. The purpose of this procedure is not to afford a later-filed finder another chance to obtain a dispositive preference for the subject license, but rather to "prevent the frequency coordinator from unknowingly reassigning the target frequency to a third party."<sup>27</sup> Finally, as was stated in the *Jersey Central Order*, the license for Station WNIT929 only continued to remain on the Commission's database following Marina Concrete's failure to file an application for authorization, because of the pendency of this proceeding.

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<sup>20</sup> Under the Commission's Rules, a license for a station cancels automatically upon failure to construct or permanent discontinuance of operation for a period of one year or more. See 47 C.F.R. §§ 90.157, 90.631, 90.633.

<sup>21</sup> Following a dispositive award to a first-filed finder, any finders, including Radio Team, that filed subsequent requests for the same station were informed of the license cancellation and the award to the first filed finder. See e.g., Letter to James Bishop, Progressive Communications, Inc., from William H. Kellet, Office of Operations, Federal Communications Commission (dated May 1, 1996); Letter to Viking Freight System, from William H. Kellet, Office of Operations, Federal Communications Commission (dated December 20, 1996); see also *supra* n. 7.

<sup>22</sup> See *supra* ¶ 4.

<sup>23</sup> 47 C.F.R. § 90.173(k).

<sup>24</sup> *Jersey Central*, 14 FCC Rcd at 14041-42 ¶ 4-5.

<sup>25</sup> Application for Review at 3.

<sup>26</sup> *Jersey Central*, 14 FCC Rcd at 14042 ¶ 5.

<sup>27</sup> *Id.*

Following the termination of this proceeding, the frequency formerly assigned to Station WNIT929 (937.9625 MHz) will become available for reassignment on a first-come, first-served basis. At that time, Radio Team may file an application requesting this channel.

#### **IV. CONCLUSION AND ORDERING CLAUSE**

8. Thus, Radio Team presents no arguments in its application for review that would lead us to change the Bureau's decision. Accordingly, we affirm the Bureau's denial of Radio Team's petition for reconsideration and deny Radio Team's application for review.

9. IT IS ORDERED THAT pursuant to Section 5(c) of the Communications Act of 1934, as amended, 47 U.S.C. § 155(c) and Section 1.115(g) of the Commission's Rules, 47 C.F.R. § 1.115(g), the Application for Review filed by Radio Team, Inc. on October 1, 1999 is DENIED.

10. IT IS FURTHER ORDERED THAT this proceeding is TERMINATED.

FEDERAL COMMUNICATIONS COMMISSION

Magalie Roman Salas  
Secretary